

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 11/30/2015

 THOMAS E. PEREZ, Secretary of Labor, :
 United States Department of Labor, :

Civil Action

Plaintiff, :

No. 1:15-cv-1358-GHW

v. :

492 & 494 WEST 238 ST. HAIRCUTTERS :
 INC. d/b/a SALON ZOE, and KRISTINA :
 VELJOVIC, Individually. :

CONSENT JUDGMENT

Defendants. :

CONSENT JUDGMENT

Plaintiff, Thomas E. Perez, the Secretary of Labor (“Secretary”) has filed his complaint and defendants 492 & 494 West 238 St. Haircutters Inc. d/b/a Salon Zoe and Kristina Veljovic (collectively, “Defendants”) have appeared by counsel and, without admitting the allegations contained in the Complaint, hereby agree to the Entry of this Judgment without contest in full settlement of any claims which have been made or asserted in this action.

1. The Secretary’s Complaint alleges that 492 & 494 West 238 St. Haircutters Inc. d/b/a Salon Zoe and Kristina Veljovic (collectively, “Defendants”) intentionally and unlawfully terminated the employment of Valerie Connolly because of her exercise of rights secured by the Act, and Defendants thereby engaged in conduct that violated § 11(c)(1) of the Act.
2. Defendants submit to the jurisdiction of this Court over them and over the subject matter of this action. Defendants admit that this Court has the authority to enter and enforce this

Order and that this Court is the most appropriate venue for any enforcement action which may be required as a result of this Order.

3. It is therefore upon motion of the attorneys for the Secretary and for good cause shown, ORDERED that Defendants, their officers, agents, servants, employees and those persons in active concert or participation with them be and hereby are permanently enjoined and restrained from violating the provisions of Section 11(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651 *et seq.* (“the Act”) in any of the following manners:
 - a. The Defendants shall not, contrary to Section 11(c)(1) of the Act, discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to the Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by the Act.
 - b. The Defendants shall not discharge, blacklist, demote, suspend, threaten, harass, intimidate or in any other manner discriminate against an employee because such employee has reported a workplace injury or illness or raised a complaint relating to health or safety issues at the workplace.
 - c. The Defendants agree that they will not advise employees against exercising rights guaranteed under the whistleblower protection statutes, such as contacting, speaking with, or cooperating with Occupational Safety and Health Administration (OSHA) officials or other government officials either during the conduct of an inspection of the employer’s facility or in the course of an investigation.

4. ORDERED that Defendants shall pay Valerie Connolly the sum of \$165,000.00 in accordance with the schedule set forth in Exhibit A. The first payment set forth in Exhibit A in the amount of \$100,000 consists of \$50,000 of compensatory damages for emotional distress, from which no payroll deductions are taken, and \$50,000 in wage payments, from which regular and lawful payroll deductions are taken and regular payroll taxes are paid. Of remaining payments set forth in Exhibit A, totaling \$65,000, \$15,000 consists of payment for wages from which regular and lawful payroll deductions are taken and regular payroll taxes are paid, and \$50,000 consists of compensatory damages for emotional distress, from which no payroll deductions shall be taken. The Secretary's back wage calculation has been reduced to account for the unemployment insurance benefits that Ms. Connolly received after June 30, 2012.
5. ORDERED that Defendants shall prepare cashier's checks in accordance with the schedule attached as Exhibit A. The cashier's checks are to be made payable to "Valerie Connolly." On or before the dates indicated in Exhibit A, Defendants shall use a delivery method with tracking information to forward the checks to the Occupational Safety and Health Administration Office, U.S. Department of Labor, 201 Varick Street, Room 670, New York, NY 10014, Attention: Teri Wigger.
6. ORDERED that Defendants shall provide directly to Ms. Connolly the following tax documents: (a) For the non-wage compensation paid in the year 2015, Defendants shall provide by January 31, 2016 a 1099-MISC form with the \$50,000 in compensatory damages for emotional distress listed as "Other Income" in Box 3; (b) for the \$50,000 wages paid in 2015, Defendants shall provide by January 31, 2016 a W-2 form (c) For the

\$15,000 in wages paid in the year 2016, Defendants shall provide a W-2 form by January 31, 2017; and (d) for the non-wage compensation paid in the year 2016, Defendants shall provide by January 31, 2017 a 1099-MISC form with the \$50,000 in compensatory damages for emotional distress listed as “Other Income” in Box 3.

7. ORDERED that should Defendants fail to make a payment in accordance with the payment schedule attached in Exhibit A, the Secretary shall notify counsel for Defendants by certified mail of their failure to make timely payment. If Defendants do not cure the failure by submitting the scheduled payment within five days of receiving the notice, the remaining balance of the \$165,000.00 shall become immediately due and the Court will appoint a Receiver from a list of names offered by the Secretary or may appoint another Receiver at its discretion. No action or non-action by the Secretary shall constitute a waiver of this paragraph. In the event a Receiver is appointed, it is ORDERED that:

- a. Defendants shall produce to the Court appointed Receiver all books and records and any other information the Receiver requires to carry out the provisions of this Consent Judgment. In addition, the Defendants shall submit to an accounting by an independent certified public accountant and/or the Receiver, and shall testify, if the accountant or Receiver so decides.
- b. All the expenses of the accountant or Receiver shall be borne solely by Defendants.
- c. The Receiver shall serve until the payment of the monetary terms of this Consent Judgment are satisfied.

- d. The Receiver shall have full authority to: collect the Defendants' assets and report his/her findings to the Court and the parties; to redeem and/or liquidate the Defendants' assets and turn over the proceeds to the Secretary; if the asset has a debt that is due, collect it and turn over the proceeds to the Secretary; to analyze all indebtedness and where deemed appropriate seek restructuring; to analyze all transfers of the Defendants' assets; to prevent waste or fraud; and to do all acts and take all measures necessary or proper for the efficient performance of the duties under this Consent Judgment.
8. ORDERED that Defendants agree to immediately remove and expunge from Valerie Connolly's employment record all references to this action and to any disciplinary action concerning this action, including termination, as described in the Complaint in this matter.
9. If in the future any prospective employer requests a job reference for Valerie Connolly, Defendants, its agents, employees, or representatives shall provide a written, neutral job reference by providing the starting and ending dates of Valerie Connolly's employment, job title, and/or rate of pay, as requested by the person or entity seeking said employment reference. Defendants agree that nothing will be said or conveyed to any third party that could be reasonably construed as damaging the name, character, or employment of Valerie Connolly.
10. ORDERED that, within 21 days of the Court's approval of this agreement, defendants shall permit a representative or representatives from the Department of Labor entry into 492 & 494 West 238 St. Haircutters Inc. d/b/a Salon Zoe to read aloud the following statement to all employees during their paid working hours:

You are protected by Section 11(c) of the Occupational Safety and Health Act and have the right to complain to the U.S. Department of Labor without fear of retaliation or intimidation. You have the right to complain to your co-workers, employer, or the Department of Labor about health or safety issues in your workplace. You have the right to speak freely with investigators or other officials from the Department of Labor.

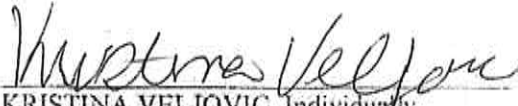

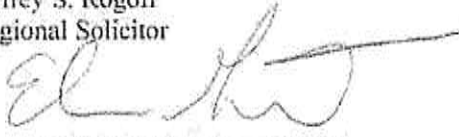
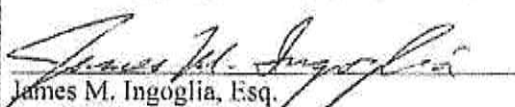
Your employer is prohibited from retaliating against you in any way, including by terminating you, disciplining you, inflicting physical harm on you, or threatening to do any of these things because you spoke with the Department of Labor. The United States District Court for the Southern District of New York has entered a Consent Judgment that confirms that Salon Zoe and Kristina Veljovic may not retaliate against you in any way for complaining about health and safety issues in the workplace or for cooperating with the Department of Labor.

If you believe that you have experienced retaliation, or if you want to complain about a health or safety concern in your workplace, you can contact the Occupational Safety and Health Administration's Tarrytown Area Office at 914-524-7510.

Defendants shall ensure that all current employees, along with the individual defendant, are present for this reading.

11. ORDERED that Defendants shall permanently post a copy of Exhibit B at 492 & 494 West 238 St. Haircutters Inc. d/b/a Salon Zoe in a conspicuous place at its work premises where it is easily seen and is readable, and will maintain this posting as required by 29 C.F.R. § 1903.2.
12. ORDERED that, within 21 days of the Court's approval of this agreement, Defendants shall distribute the attached OSHA Fact Sheet, annexed hereto as Exhibit C, to all of their current employees. Defendants shall also distribute the Exhibit C to all new employees hired from November 25, 2015 through November 30, 2017 and shall maintain signed employee certifications indicating that Exhibit C has been distributed in the format set forth at Exhibit D until November 30, 2017.

13. ORDERED that each party shall bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding, except for the provisions set forth in paragraph 7.

For the Defendants:	For the Plaintiff:
 KRISTINA VELJOVIC, Individually	M. Patricia Smith Solicitor of Labor
 492 & 494 West 238 St. Haircutters Inc. d/b/a Salon Zoe	Jeffrey S. Rogoff Regional Solicitor 
 James M. Ingoglia, Esq. Counsel for Defendants	Elena S. Goldstein, Esq. Senior Trial Attorney
Raiser & Kenniff, P.C. 300 Old Country Rd., Suite 351 Mineola, NY 11501 Tel: 516-742-7600 Fax: 516-742-7618	Amy Tai Trial Attorney
DATE: <u>11/24/15</u>	Attorneys for Plaintiff, U.S. DEPARTMENT OF LABOR
	U.S. Department of Labor Office of the Solicitor 201 Varick Street, Rm. 983 New York, NY 10014 Boston, MA 02203 Tel: 646-264-3686 Fax: 646-264-36600
	DATE: <u>11/24/15</u>

Dated: November 30, 2015
 New York, New York

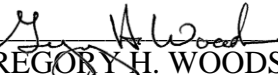

 GREGORY H. WOODS
 United States District Judge

Exhibit A

EXHIBIT A

Payment	Due On or Before	Amount
1	December 1, 2015	\$100,000
2	January 4, 2016	\$16,250
3	February 4, 2016	\$16,250
4	March 4, 2016	\$16,250
5	April 4, 2016	\$16,250
TOTAL		\$165,000.00

Exhibit B

OSHA[®] FactSheet

Your Rights as a Whistleblower

You may file a complaint with OSHA if your employer retaliates against you by taking unfavorable personnel action because you engaged in protected activity relating to workplace safety or health, asbestos in schools, cargo containers, airline, commercial motor carrier, consumer product, environmental, financial reform, food safety, health insurance reform, motor vehicle safety, nuclear, pipeline, public transportation agency, railroad, maritime, motor vehicle safety, and securities laws.

Whistleblower Laws Enforced by OSHA

Each law requires that complaints be filed within a certain number of days after the alleged retaliation.

- *Asbestos Hazard Emergency Response Act* (90 days)
- *Clean Air Act* (30 days)
- *Comprehensive Environmental Response, Compensation and Liability Act* (30 days)
- *Consumer Financial Protection Act of 2010* (180 days)
- *Consumer Product Safety Improvement Act* (180 days)
- *Energy Reorganization Act* (180 days)
- *Federal Railroad Safety Act* (180 days)
- *Federal Water Pollution Control Act* (30 days)
- *International Safe Container Act* (60 days)
- *Moving Ahead for Progress in the 21st Century Act* (motor vehicle safety) (180 days)
- *National Transit Systems Security Act* (180 days)
- *Occupational Safety and Health Act* (30 days)
- *Pipeline Safety Improvement Act* (180 days)
- *Safe Drinking Water Act* (30 days)
- *Sarbanes-Oxley Act* (180 days)
- *Seaman's Protection Act* (180 days)
- *Section 402 of the FDA Food Safety Modernization Act* (180 days)
- *Section 1558 of the Affordable Care Act* (180 days)
- *Solid Waste Disposal Act* (30 days)
- *Surface Transportation Assistance Act* (180 days)
- *Toxic Substances Control Act* (30 days)
- *Wendell H. Ford Aviation Investment and Reform Act for the 21st Century* (90 days)

Unfavorable Personnel Actions

Your employer may be found to have retaliated against you if your protected activity was a

contributing or motivating factor in its decision to take unfavorable personnel action against you. Such actions may include:

- Applying or issuing a policy which provides for an unfavorable personnel action due to activity protected by a whistleblower law enforced by OSHA
- Blacklisting
- Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failing to hire or rehire
- Firing or laying off
- Intimidation
- Making threats
- Reassignment to a less desirable position, including one adversely affecting prospects for promotion
- Reducing pay or hours
- Suspension

Filing a Complaint

If you believe that your employer retaliated against you because you exercised your legal rights as an employee, contact OSHA as soon as possible because you must file your complaint within the legal time limits.

An employee can file a complaint with OSHA by visiting or calling the local OSHA office or sending a written complaint to the closest OSHA regional or area office. Written complaints may be filed by facsimile, electronic communication, hand delivery during business hours, U.S. mail (confirmation services recommended), or other third-party commercial carrier. The date of the postmark, facsimile, electronic communication, telephone call, hand delivery, delivery to a third-party commercial carrier, or in-person filing at an OSHA

office is considered the date filed. No particular form is required and complaints may be submitted in any language.

For OSHA area office contact information, please call 1-800-321-OSHA (6742) or visit www.osha.gov/html/RAmap.html.

Upon receipt of a complaint, OSHA will first review it to determine whether it is valid on its face. All complaints are investigated in accord with the statutory requirements.

With the exception of employees of the U.S. Postal Service, public sector employees (those employed as municipal, county, state, territorial or federal workers) are not covered by the *Occupational Safety and Health Act* (OSH Act). Non-federal public sector employees and, except in Connecticut, New York, New Jersey, the Virgin Islands, and Illinois, private sector employees are covered in states which operate their own occupational safety and health programs approved by Federal OSHA. For information on the 27 State Plan states, call 1-800-321-OSHA (6742), or visit www.osha.gov/dcsp/osp/index.html.

A federal employee who wishes to file a complaint alleging retaliation due to disclosure of a substantial and specific danger to public health or safety or involving occupational safety or health should contact the Office of Special Counsel (www.osc.gov) and OSHA's Office of Federal Agency Programs (www.osha.gov/dep/enforcement/dep_offices.html).

Coverage of public sector employees under the other statutes administered by OSHA varies by statute. If you are a public sector employee and you are unsure whether you are covered under a whistleblower protection statute, call 1-800-321-OSHA (6742) for assistance, or visit www.whistleblowers.gov.

How OSHA Determines Whether Retaliation Took Place

The investigation must reveal that:

- The employee engaged in protected activity;
- The employer knew about or suspected the protected activity;
- The employer took an adverse action; and
- The protected activity motivated or contributed to the adverse action.

If the evidence supports the employee's allegation and a settlement cannot be reached, OSHA will generally issue an order, which the employer may contest, requiring the employer to reinstate the employee, pay back wages, restore benefits, and other possible remedies to make the employee whole. Under some of the statutes the employer

must comply with the reinstatement order immediately. In cases under the *Occupational Safety and Health Act*, *Asbestos Hazard Emergency Response Act*, and the *International Safe Container Act*, the Secretary of Labor will file suit in federal district court to obtain relief.

Partial List of Whistleblower Protections

Whistleblower Protections under the OSH Act

The OSH Act protects workers who complain to their employer, OSHA or other government agencies about unsafe or unhealthful working conditions in the workplace or environmental problems. You cannot be transferred, denied a raise, have your hours reduced, be fired, or punished in any other way because you used any right given to you under the OSH Act. Help is available from OSHA for whistleblowers.

If you have been punished or discriminated against for using your rights, you must file a complaint with OSHA within 30 days of the alleged reprisal for most complaints. No form is required, but you must send a letter or call the OSHA Area Office nearest you to report the discrimination (within 30 days of the alleged discrimination).

You have a limited right under the OSH Act to refuse to do a job because conditions are hazardous. You may do so under the OSH Act only when (1) you believe that you face death or serious injury (and the situation is so clearly hazardous that any reasonable person would believe the same thing); (2) you have tried, where possible, to get your employer to correct the condition, and been unable to obtain a correction and there is no other way to do the job safely; and (3) the situation is so urgent that you do not have time to eliminate the hazard through regulatory channels such as calling OSHA. For details, see www.osha.gov/as/opa/worker/refuse.html. OSHA cannot enforce union contracts or state laws that give employees the right to refuse to work.

Whistleblower Protections in the Transportation Industry

Employees whose jobs directly affect commercial motor vehicle safety or security are protected from retaliation by their employers for, among other things, reporting violations of federal or state commercial motor carrier safety or security regulations, or refusing to operate a vehicle because of violations of federal commercial motor vehicle safety or security regulations or because they have a reasonable apprehension of death or serious injury to themselves or the public and they have sought from the employer and been unable to obtain correction of the hazardous condition.

Similarly, employees of air carriers, their contractors or subcontractors who raise safety concerns or report violations of FAA rules and regulations are protected from retaliation, as are employees of owners and operators of pipelines, their contractors and subcontractors who report violations of pipeline safety rules and regulations. Employees involved in international shipping who report unsafe shipping containers are also protected. In addition, employees of railroad carriers or public transportation agencies, their contractors or subcontractors who report safety or security conditions or violations of federal rules and regulations relating to railroad or public transportation safety or security are protected from retaliation.

Whistleblower Protections for Voicing Environmental Concerns

A number of laws protect employees from retaliation because they report violations of environmental laws related to drinking water and water pollution, toxic substances, solid waste disposal, air quality and air pollution, asbestos in schools, and hazardous waste disposal sites. The *Energy Reorganization Act* protects employees

from retaliation for raising safety concerns in the nuclear power industry and in nuclear medicine.

Whistleblower Protections When Reporting Corporate Fraud

Employees who work for publicly traded companies or companies required to file certain reports with the Securities and Exchange Commission are protected from retaliation for reporting alleged mail, wire, bank or securities fraud; violations of SEC rules or regulations of the SEC; or violations of federal laws relating to fraud against shareholders.

Whistleblower Protections for Voicing Consumer Product Concerns

Employees of consumer product manufacturers, importers, distributors, retailers, and private labelers are protected from retaliation for reporting reasonably perceived violations of any statute or regulation within the jurisdiction of the Consumer Safety Product Safety Commission.

More Information

To obtain more information on whistleblower laws, go to www.whistleblowers.gov.

This is one of a series of informational fact sheets highlighting OSHA programs, policies, or standards. It does not impose any new compliance requirements. For a comprehensive list of compliance requirements of OSHA standards and regulations, refer to Title 29 of the Code of Federal Regulations. Because some of these whistleblower laws have only recently been enacted, the final regulations implementing them may not yet be available in the Code of Federal Regulations but the laws are still being enforced by OSHA. This information will be made available to sensory-impaired individuals upon request. Voice phone number: (202) 693-1999; teletypewriter (TTY) number: (877) 889-5627.

For assistance, contact us. We can help. It's confidential.



**U.S. Department of Labor
www.osha.gov (800) 321-OSHA (6742)**

Exhibit C



Job Safety and Health

IT'S THE LAW!

All workers have the right to:

- A safe workplace.
- Raise a safety or health concern with your employer or OSHA, or report a work-related injury or illness, without being retaliated against.
- Receive information and training on job hazards, including all hazardous substances in your workplace.
- Request an OSHA inspection of your workplace if you believe there are unsafe or unhealthy conditions. OSHA will keep your name confidential. You have the right to have a representative contact OSHA on your behalf.
- Participate (or have your representative participate) in an OSHA inspection and speak in private to the inspector.
- File a complaint with OSHA within 30 days (by phone, online or by mail) if you have been retaliated against for using your rights.
- See any OSHA citations issued to your employer.
- Request copies of your medical records, tests that measure hazards in the workplace, and the workplace injury and illness log.

This poster is available free from OSHA.

Contact OSHA. We can help.

Employers must:

- Provide employees a workplace free from recognized hazards. It is illegal to retaliate against an employee for using any of their rights under the law, including raising a health and safety concern with you or with OSHA, or reporting a work-related injury or illness.
- Comply with all applicable OSHA standards.
- Report to OSHA all work-related fatalities within 8 hours, and all inpatient hospitalizations, amputations and losses of an eye within 24 hours.
- Provide required training to all workers in a language and vocabulary they can understand.
- Prominently display this poster in the workplace.
- Post OSHA citations at or near the place of the alleged violations.

FREE ASSISTANCE to identify and correct hazards is available to small and medium-sized employers, without citation or penalty, through OSHA-supported consultation programs in every state.



Exhibit D

EXHIBIT D

EMPLOYEE ACKNOWLEDGMENT FORM OSHA WHISTLEBLOWER FACTSHEET

I hereby certify that on the date indicated below, I received the OSHA Fact Sheet entitled “Your Rights as a Whistleblower.” I have reviewed the Fact Sheet and am aware that I may file a complaint with OSHA if my employer retaliates against me by taking an unfavorable personnel action because I made a complaint relating to workplace safety and health.

Date

Employee Signature